

Before the
Administrative Hearing Commission
State of Missouri

BO L. CARTER,)	
)	
Petitioner,)	
)	
vs.)	No. 13-1684 PO
)	
DIRECTOR OF PUBLIC SAFETY,)	
)	
Respondent.)	

DECISION

The Director of the Department of Public Safety (“the Director”) has cause to deny the application of Bo Carter for entrance into a basic training course for peace officers because he committed the criminal offenses of carrying a concealed weapon and receiving stolen property.

Procedure

On September 23, 2013, Carter appealed the denial of his application. The Director filed an answer. We held a hearing on March 5, 2014. Carter appeared *pro se*. Curtis Schube and Faraz Nayyar, Assistant Attorneys General, represented the Director. The case became ready for our decision on May 12, 2014, the date Carter’s written argument was due.

Findings of Fact

1. On May 30, 2002, Carter pled guilty to two counts of receiving stolen property with a value over \$150 in the Circuit Court of Greene County.¹ On August 5, 2002, he was given a suspended imposition of sentence and ordered to serve probation for five years with special conditions.

¹ Section 570.080, RSMo 2000. Statutory references are to RSMo Supp. 2013 unless otherwise noted.

2. On October 7, 2001, Carter was in possession of a 3-4 inch butterfly knife readily capable of lethal force, in direct violation of Republic City Ordinance 16.36.

3. On November 14, 2001, Carter pled guilty in the Municipal Court of Republic to carrying a concealed weapon, for the aforementioned possession of a knife. He was sentenced to pay a fine and court costs in the amount of \$73.00.

4. On June 28, 2013, Carter applied for admission into a basic training course as a peace officer.

5. On August 5, 2013, the Director denied Carter's application.

Conclusions of Law

We have jurisdiction of Carter's appeal. Section 590.100.3. Carter has the burden of proving he is qualified to enter a basic training course.² Carter must prove his qualifications by a preponderance of the evidence, or "evidence which as a whole shows the fact to be proved to be more probable than not."³

The Director's answer provides notice of the facts and law at issue.⁴ The Director relies upon § 590.100, which provides:

1. The director shall have cause to deny any application for a peace officer license or entrance into a basic training course when the director has knowledge that would constitute cause to discipline the applicant if the applicant were licensed.

Section 590.080.1(2), authorizes discipline of any peace officer who "[h]as committed any criminal offense, whether or not a criminal charge has been filed[.]" Section 556.016⁵ defines a criminal offense as follows:

1. An offense defined by this code or by any other statute of this state, for which a sentence of death or imprisonment is authorized,

² Section 621.120, RSMo 2000.

³ *State Board of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App., W.D. 2000).

⁴ *Ballew v. Ainsworth*, 670 S.W.2d 94, 103 (Mo. App., E.D. 1984).

⁵ RSMo 2000.

constitutes a “**crime**”. Crimes are classified as felonies and misdemeanors.

A municipal ordinance violation is not a criminal offense.⁶ On his application, Carter disclosed he was arrested or charged for the offenses of carrying a concealed weapon and receiving stolen property.

Receiving Stolen Property

With respect to this offense, Carter pled guilty to violating § 570.080.1,⁷ which states:

1. A person commits the crime of receiving stolen property if for the purpose of depriving the owner of a lawful interest therein, he receives, retains or disposes of property of another knowing that it has been stolen, or believing that it has been stolen.

* * *

3. Receiving stolen property is a class A misdemeanor unless the property involved has a value of one hundred fifty dollars or more...in which cases receiving stolen property is a class C felony.

Carter pled guilty to receiving stolen property and the Circuit Court suspended imposition of sentence. A guilty plea resulting in a suspended imposition of sentence does not collaterally estop the issue of whether Carter committed a criminal offense.⁸ However, a guilty plea is evidence of the conduct charged and a declaration against interest, which the defendant may explain away.⁹ Carter did not do so and stated he did not deny the charges. Thus, we find, not only that Carter pled guilty to the criminal offense, but that he committed the underlying conduct and committed the criminal offense of receiving stolen property.

⁶*City of Cape Girardeau v. Jones*, 725 S.W.2d 904, 907 (Mo. App., E.D. 1987). The Director originally claimed Carter materially misrepresented his criminal history on the application because he failed to list all of his past municipal ordinance violations. At the hearing, the Director voluntarily dismissed that portion of the answer, and his claim that there was cause for discipline under § 590.080.1(4).

⁷ RSMo 2000.

⁸ *Director of the Department of Public Safety v. Bishop*, 297 S.W.3d 96 (Mo. App., W.D. 2009).

⁹ *Nichols v. Blake*, 418 S.W.2d 188, 190 (Mo. 1967).

Carrying a Concealed Weapon

Carter pled guilty in the Municipal Court of Republic to carrying a concealed weapon. The underlying fact regarding this guilty plea was his possession of a 3-4 inch butterfly knife readily capable of lethal force. At the hearing before this Commission, Carter admitted that the documents submitted into evidence by the Director, which included certified records from the Municipal Court, were true. The Director argues that this conduct fits the element of the crime of unlawful use of a weapon under § 571.030, which provides:

1. A person commits the crime of unlawful use of weapons if he or she knowingly:

(1) Carries concealed upon or about his or her person a knife ... readily capable of lethal use[.]

We agree with the Director and find Carter committed the criminal offense of unlawful use of a weapon.

Rehabilitation

In his complaint and at the hearing, Carter urged consideration of the lawfulness of his conduct since his last arrest in Republic, his status as a youthful offender back then, and his desire to be a police officer to set an example for young people who might start down a similar path. However, in licensing cases under §§ 590.010 to 590.195, we do not have discretion to grant a license to a fully rehabilitated applicant. Under § 590.100.3, that discretion rests with the Director:

Any applicant aggrieved by a decision of the director pursuant to this section may appeal within thirty days to the [Commission], which shall conduct a hearing to determine whether the director has cause for denial, and which shall issue findings of fact and conclusions of law on the matter. The [Commission] shall not consider the relative severity of the cause for denial or any rehabilitation of the applicant or otherwise impinge upon the discretion of the director to determine whether to grant the

applicant subject to probation or deny the license when cause exists pursuant to this section.

We understand Carter's appeal as challenging the exercise of the Director's discretion in denying him access to academy training on the Director's findings that he had committed criminal offenses, but we are bound by this record and by § 590.100.3, which bars us from any review of that discretion. Nor can we consider mitigating factors of past conduct or motivating factors involved in any rehabilitation since the last offense. When the Director asserts cause to deny the application on grounds that the applicant has committed a criminal offense, the statute allows us only to consider whether the applicant in fact committed the offense. We have no other authority in the other matters. However, § 590.100.4 provides:

Upon a finding by the administrative hearing commission that cause for denial exists, the director shall not be bound by any prior action on the matter and shall, within thirty days, hold a hearing to determine whether to grant the application subject to probation or deny the application.

Therefore, Carter will have another chance to plead his case for permission to enter a peace officer training academy at the Director's hearing.

Summary

There is cause to deny Carter's application because he twice committed the criminal offense of receiving stolen property and committed the criminal offense of carrying a concealed weapon.

SO ORDERED on June 17, 2014.

/s/ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner